

THE HONORABLE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BUNKER HOLDINGS LTD.,

Plaintiff,

v.

M/V YM SUCCESS (IMO 9294800), her tackle,
boilers, apparel, furniture, engines, appurtenances,
etc., *in rem*,

Defendant.

IN ADMIRALTY

CASE NO.: 3:14-cv-06002-BHS

***EX PARTE* MOTION FOR
APPROVAL OF SUBSTITUTE
SECURITY AND RELEASE OF
VESSEL**

**NOTE ON MOTION CALENDAR:
December 30, 2014**

COMES NOW Plaintiff, BUNKER HOLDINGS LTD. (hereinafter "BUNKER HOLDINGS" or "Plaintiff"), by and through undersigned counsel, and moves for an Order approving substitute security and releasing the M/V YM SUCCESS (hereinafter the "Vessel") from arrest. As grounds for this motion, Plaintiff states the following:

1. Counsel for the Vessel's Owners, Yang Ming Liberia Corp., has provided substitute security to stand in place of the M/V YM SUCCESS and serve as security for Plaintiff's *in rem* claims against the vessel pursuant to Rule E(5)(a) of the Supplemental Admiralty Rules. *See* Rule E(5)(a).

2. Specifically, the parties have agreed to substitute security in the form of an acceptable Letter of Undertaking ("LOU") in the amount of USD 2,400,000 to secure claims *in rem* against the said vessel, supplied to counsel for Plaintiff, which the parties agree may be

substitute *res* in lieu of the *in rem* arrest of the vessel. See *Petroleos Mexicanos Refinacion v. M/T King A*, 554 F.3d 99, 105 (3d Cir. 2009) (“[A]s a substitute for the *res*, [the LOU] ha[s] the effect of transferring the maritime lien from the vessel to the security fund.”); *Betty K Agencies, Ltd. v. M/V MONADA*, 432 F.3d 1333, 1341 (11th Cir. 2005) (noting the substitute security “becomes substitute for the property.”) (internal citations omitted); see also *Mackensworth v. S.S. AMERICAN MERCHANT*, 28 F.3d 246, 252 (2d Cir. 1994) (Holding that the LOU was posted pursuant to Supplemental Rule E(5)(a) and “[i]n accordance with generally accepted practice, this Letter of Undertaking became the substitute *res* for the value of [Plaintiff’s *in rem*] claim”) (citing *Alyeska Pipeline Serv. Co. v. The Vessel Bay Ridge*, 703 F.2d 381, 384 (9th Cir. 1983), *cert. dismissed*, 467 U.S. 1247 (1984) (“A plaintiff’s lien for the claims alleged against the vessel is transferred to the security posted.”); *Gabarick v. Laurin Mar. Am., Inc.*, 2014 U.S. Dist. LEXIS 135248, *298–299 (E.D. La. 2014) (“...the LOU operates as a substitute *res*, in place of the vessel, against which the Court’s judgment is enforceable to the same extent that it would be were the vessel actually in the custody of the Court or a designated trustee.”)

3. As the parties have stipulated and agreed to substitute security in accordance with the provisions of Supplemental Rule E(5)(a), it is respectfully requested that the Court approve the security provided to counsel for Plaintiff in lieu of continuation of arrest of the vessel and that the U.S. Marshal be directed to release the arrested property, the M/V YM SUCCESS, without delay.

4. Finally, undersigned counsel confirms that the fees for the United States Marshal have been provided¹, and that there are no other parties that have appeared in this action. Therefore, the vessel may immediately be released from arrest. A form of proposed Order is submitted with this Motion.

¹ The U.S. Marshal has advised that it has not yet been invoiced for the services provided relating to the arrest, but confirms that Bunker Holdings provided the required deposit. Once invoiced, the U.S. Marshal fees will be deducted from this deposit.

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2 DATED this 30th day of December, 2014.

3 *Of counsel:*

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